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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,153	12/26/2001	James B. Gibson	1555(Gibson)	1598

30010 7590 10/16/2003

AUZVILLE JACKSON, JR.
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EXAMINER

HUYNH, LOUIS K

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 10/16/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,153

Applicant(s)

GIBSON, JAMES B.

Examiner

Louis K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) 2-4, 8, 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1, 5-7, 9 and 11, in Paper No. 3 is acknowledged, and a further election without traverse of Group IA, claims 1, 5-7 and 9, in Paper No. 5 is also acknowledged.

Claims 2-4, 8, 10 and 11 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper Nos. 3 and 5.

Drawings

2. The drawings contain hand written reference numbers and are therefore considered to be informal which are acceptable for examination purposes. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 5-7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 2: "their" is indefinite for it is unclear as to whom applicant is referring.

Claim 1, lines 11-12: "a plurality of various sized pills from one of said hoppers" lacks proper antecedent basis.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aylward (US 5,737,902) in view of Siegel (US 4,776,150).

Aylward discloses a packaging system including: a plurality of hoppers (22) in a linear arrangement; a plurality of nozzles (40), each of the nozzles (40) associated with one of the hoppers (22); a door (33) for simultaneously opening and closing a passageway between each of the hoppers (22) and the associated nozzle (40); a multi-compartmented container (15) comprising a plurality of blister packages in a linear arrangement, wherein the packages are of a size and alignment to allow the packages to receive pills from the hoppers (22); and a sealing arrangement to seal the pills within the packages (column 1, lines 23-26).

The system of Aylward meets most of applicant's claimed subject matter but lacks the specific teaching of a manually operated hopper door. However, the system of Aylward includes a door (33) that can be manually operated to simultaneously open the passageways between the hoppers (22) and the nozzles (40) to release the pills in the hoppers to the nozzles. It would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the system of Aylward by having provided a manually operated door, since broadly providing a manually operated means to replace automatically operated means which has accomplished the same result involves only routine skill in the art.

The system of Aylward including a sealing arrangement meets all of applicant's claimed subject matter but lacks the specific teaching of a heat sealing arrangement for simultaneously sealing each of the packages. However, Siegel discloses a heat sealing apparatus (10) for simultaneously sealing medication blister cards. Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the system of Aylward by having provided a heat sealing arrangement, as taught by Siegel, in order to simultaneously seal the pills in the packages.

Regarding the limitation of each of the packages simultaneously receiving a plurality of various sized pills from one of the hoppers, the modified system of Aylward would be capable of dispensing a plurality of articles of different sizes and/or shapes. Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham, 2 USPQ2d 1647 (1987)*.

With respect to claim 5, the specific size of the package is obvious as a matter of engineering design choice since it does not solve any stated problem insofar as the record is concerned and thus does not patentably distinguish the claimed invention over the applied prior art.

With respect to claim 9, the discharge ends of the nozzles (40) in the modified system of Aylward would have angled surfaces (Figures 6-11).

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7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above; and further in view of La Branche (US 2,958,172) and Alden (US 5,177,937).

The modified system of Aylward meets most of applicant's claimed subject matter but lacks the specific teaching of a specific heat sealing unit including a metal heat sealing strip, and a hinged cover. However, La Branche discloses a well-known sealing apparatus for sealing blister packages including a hinged cover (38), and an electrical heating element (50). It would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have further modified the system of Aylward by having provided a heat sealing apparatus, as taught by Smith, in order to seal the pills in the packages.

The modified system of Aylward meets all of applicant's claimed subject matter but lacks the specific teaching of a heat sensor connected to an indicator light for changing state when the sensor detects that the packages have achieved an optimal sealing temperature. However, Alden discloses a sealing device (10) for sealing plastic material including an LED (45) for indicating the status of the device (10) (column 5, lines 27-35), and an electronic control unit (40) having integrated sensor for controlling the temperature of the heating element (23) (column 4, line 45 – column 5, line 7). Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have further modified the system of Aylward by having provided an electronic control unit having integrated sensor for controlling the temperature of the heating element, as taught by Alden, in order to properly seal the packages.

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Response to Arguments

8. Applicant's argument with respect to the rejection under 35 U.S.C. 102(b) of claim 1 as being anticipated by Aylward (US 5,737,902) is moot in view of the new ground of rejection as set forth above.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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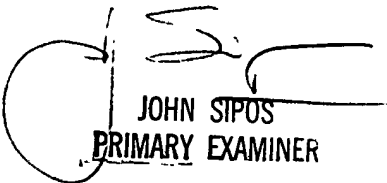
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

LH

October 9, 2003


JOHN SIPOS
PRIMARY EXAMINER